IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

WP(C).No. 34791 of 2007(P)

PETITIONER:

M/S. XEROX INDIA LTD.,
(MODI XEROX LTD.), 36/1951, 1ST FLOOR,
KALOOR TOWERS, ELAMKULAM ROAD, KALOOR,
KOCHI-682 017, ERNAKULAM DISTRICT, REPRESENTED BY
ITS MANAGER CA. SRI. P.VISWANATHAN.

BY ADV. SRI.A.KUMAR

RESPONDENTS:

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1. THE INTELLIGENCE INSPECTOR,
COMMERCIAL TAXES, SQUAD NO.II, WAYANAD,
KALPETTA.

2. THE ASSISTANT COMMISSIONER,
KVAT SPECIAL CIRCLE II, DEPT. OF COMMERCIAL TAXES,
THEVARA, ERNAKULAM.

BY GOVERNMENT PLEADER SRI. GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J

W.P.(C).34791/2007

Dated this the 26th day of November, 2007

JUDGMENT

The goods manufactured and transported by the petitioner is under detention and Ext.P3 is the notice of detention. It is stated that the value adopted for the machine is Rs.2,71,506/- but on physical varification of the printer, the MRP shown in the box was Rs.7,15,681/- and which indicated a difference of Rs.4,44,175/-. On this basis, it is stated that the consignee had colluded with the consignor and is attempting to evade tax resorting to under valuation.

2. Learned counsel for the petitioner would submit that it is a case of stock transfer and therefore there is no question of any tax evasion. It is also contended that while the sale price is determined by market prices, MRP is declared only for other purposes including taxation. Therefore, contention is that difference is nothing but natural. It is also contended that the Officer in the check post had no authority to detain the goods in

as much as Section 45(d) has no application for stock transfer.

3. Primafacie I am not satisfied with the contentions raised. The contention that MRP is totally unrelated with the actual sale price and the argument that the check post authority had no right to detain the goods are required to be adjudicated. Accordingly, I am not inclined to direct that the goods shall be released as prayed for in this writ petition. However, if the petitioner furnishes Bank guarantee, the goods may be released. Thereafter adjudication shall continue.

Writ petition is disposed of as above.

ANTONY DOMINIC
Judge

mrcs